

LEGAL NOTICE
Notice of Proposed Rulemaking
Public Hearing

Notice is hereby given of proposed rulemaking and public hearing by the Department of Labor and Industrial Relations, Unemployment Insurance (UI) Division, to amend Chapter 5, Title 12, Hawaii Administrative Rules (HAR), pursuant to the Hawaii Employment Security Law, Section 383-92, Hawaii Revised Statutes (HRS), and the Hawaii Administrative Procedure Act, Chapter 91, HRS.

The purpose of this public hearing is to promulgate administrative rules that conform to U.S. Department of Labor (USDOL) standards as well as to codify existing practices within the UI Division. Additionally, the proposed changes to Chapter 5, Title 12, are intended to:

- Clarify definitions;
- Clarify the ABC test and its application;
- Clarify procedures for obtaining information from employers;
- Clarify a non-charge condition;
- Clarify eligibility provisions such as registration for work and availability for work;
- Clarify definitions used in the between and within terms denial of educational employees;
- Clarify voluntary quit with good cause in domestic or sexual violence cases;
- Clarify provisions for filing and withdrawing an unemployment claim; and
- Add new regulations relating to interstate overpayment recovery as a result of Hawaii's participation in the Interstate Reciprocal Overpayment Recovery Arrangement.

Specifically, the proposed changes include:

- a. Section 12-5-1 is amended to amend definitions of: 1) "base period" in accordance with the provisions of Act 219 approved by the Governor on 7/2/03; 2) "full-time" to clarify the use of the term; 3) "physician" to clarify the persons associated with that term; and 4) "week" to correct the subsection cited.

The change to the base period definition is necessary due to the enactment of the alternate base period. The definitions for full-time and physician are added to eliminate confusions on what is acceptable and what is not.

- b. Section 12-5-2 is amended to clarify the ABC test and its application.

This section is added so employers would have a better indication of what factors are considered in rendering coverage determinations by the department.

- c. Section 12-5-17(g) is amended to change the reference from the first four of the last five to the last five completed quarters as provided in Act 219; and to provide for

obtaining wage and separation information from the employer by means other than mail, such as phone, fax, or electronic mail in order to meet timeliness standards set by the USDOL. Section 12-5-17(h) is amended to provide that the department will make a determination on available information furnished by the individual if the employer fails to submit a low earnings report within an allotted time.

The changes to (g) are made to accommodate the law change and the current office practice of using the phone, fax, or email to obtain required information faster in order to meet USDOL criteria for benefit payment promptness.

The change to (h) is made to provide timely payments on partial or part-total claims where lack of earnings verification from employers caused prolonged delays.

- d. Section 12-5-23(b)(2) is amended to clarify that a noncharge for benefits would also include an individual who “could have” continued working the same hours as in the base period.

This change is made to address situations where a part-time employee voluntarily elects to work less hours for an employer and then files a claim for UI benefits. Without this change, the employer is not relieved from benefit charges even though it was the claimant who altered conditions to work less hours.

- e. Section 12-5-31 is amended to clarify that an individual who relocates to another labor market must register for work in the new locality and to waive registration for individuals who are temporarily suspended for five weeks or less. The amendment also clarifies that an individual who fails to register for work within the seven days deadline is ineligible for benefits beginning with the week of the application for benefits and ends prior to the week in which the claimant registers for work. In addition, the amendment provides a definition of “registered for work.”

This change is made to ensure that claimants who relocate from one island to another are re-registered for work in the new area since the employment offices only service the claimants on their respective islands. The other change is made to ensure consistency in late work registration issues as there was a conflict in ruling between the UI Division and the Appeals Office over the week in which the claimant registers for work. The Appeals Office disqualified the claimant for the entire week and the UI Division did not. The proposed definition is intended to facilitate the individual’s efforts to return to work.

- f. Section 12-5-35 is amended to establish eligibility requirements on availability for work search and to clarify that recipients of temporary partial or temporary total disability under any state’s workers’ compensation law are not considered able and available for work.

The addition of (c) is made to require 3 work search contacts each week.

The addition of (e) is made to correct the inequity of an individual receiving income from two wage replacement programs.

- g. Section 12-5-39(a)(7) is amended to add in the definition contained in the federal manual for draft legislation. Section 12-5-39(c)(6) is amended to delete “between terms” in the last sentence as the paragraph deals with “within terms” denial. Section 12-5-39(d)(1) is amended to make grammatical changes in text.

The changes to (a)(7) were made due to questions arising as to which types of organizations were to be included as educational institutions or not.

- h. Section 12-5-47(c) is amended to add another reason to the list of good cause for leaving employment for circumstances in which domestic or sexual violence causes an individual to separate from employment for the safety of the individual or the individual’s minor child.
- i. Section 12-5-81(b) is amended to allow backdating of new claims where good cause is established by the claimant. Section 12-5-81(d) is amended to clarify that the applicant shall present identification only “upon request” since most claimants no longer report in person and file claims over the telephone instead. Section 12-5-81(e) is amended to include a disqualification provision so that the denial includes the week that the individual fails to provide relevant information and continuing until the conditions are met. Section 12-5-81(f) is amended to clarify that subsections (a) and (b) also apply to additional claims in the same manner as it already applies to reopened claims per section 12-5-81(e)(5). Section 12-5-81(g) is amended to allow partial unemployment to extend beyond four consecutive weeks under limited circumstances where the individual is still under obligation to perform services for the employer and has a reasonable return to work date. Section 12-5-81(i) is amended to include that the department also requires an individual to call or to provide additional information to an office of the unemployment insurance division as instructed by the department; and to provide that failure to attend a worker profiling orientation session would disqualify an individual from the week of non-compliance. Section 12-5-81(j) is also amended to include the failure to call or provide additional information.

The changes to (b) and (f) were made to support local office practices of backdating claims under conditions which were clearly not the fault of the claimant.

The change to (d) was necessary since the majority of claims are now taken over the phone.

The changes to (e) and (j) clarify the conditions for disqualification and includes situations where the claimant fails to respond to a call from the department requesting more information.

The change to (g) also supports local office practices of extending partial claims where the employer will recall employees.

The change to (i) resolves a conflict which developed over a disqualification for non-attendance at a worker profiling orientation session. The Regional Office failed one decision during a review because the orientation session was not considered part of the reemployment services.

- j. Section 12-5-89(a) is amended to provide that a claim can be withdrawn if only the waiting period has been served but no benefits paid and that any determinations rendered on a claim that is withdrawn is not voided and requalification would apply to the weekly benefit amount of the new claim.

This change makes it clearer that a claim can be withdrawn if benefits have not been paid regardless of whether a waiting period has been filed. The intent is to permit a claimant to pursue a new claim under more favorable conditions such as a higher weekly benefit amount by canceling an old claim which was never used.

The proposed amendment also clarifies that disqualifications already rendered would not be voided by the withdrawal of the claim. So if a claimant is disqualified for quitting and did not file any claim certifications, the claim could be withdrawn but the disqualification would still stand and the claimant would have to meet requalification conditions to be eligible for benefits again.

- k. Section 12-5-129 is amended to include the addition of new regulations relating to interstate overpayment recovery as provided in the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA).

This change resulted from Hawaii's participation in IRORA under which states can recover overpayments for each other.

- l. Section 12-5-133 is amended to add definitions relating to interstate overpayment recovery as provided in IRORA.
- m. Section 12-5-151 is added to clarify the recovery of state or federal benefit overpayments as provided under IRORA.

A copy of the proposed rule changes will be made available for public viewing from the first working day that the legal notice appears in the Honolulu Star-Bulletin, The Honolulu Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island, through the day the public hearing is held, from Monday - Friday between the hours of 1:00 p.m. - 4:00 p.m., at the following locations:

Honolulu Claims Office

830 Punchbowl Street, Room 110, Honolulu, Hawaii 96813

Waipahu Claims Office

Waipahu Civic Center

94-275 Mokuola Street, Room 301, Waipahu, Hawaii 96797

Kaneohe Claims Office

45-1141 Kamehameha Highway, Kaneohe, Hawaii 96744

Hilo Claims Office

1990 Kinoole Street, Suite 101, Hilo, Hawaii 96720

Kona Claims Office

Kealahou Post Office Building

81-990 Halekii Street, Room 2090, Kealahou, Hawaii 96750

Maui Claims Office

54 South High Street, Room 201, Wailuku, Hawaii 96793

Molokai Claims Office

55 Makaena Street, Room 4, Kaunakakai, Hawaii 96748

Kauai Claims Office

3-3100 Kuhio Highway, Suite 12, Lihue, Hawaii 96766

A copy of the proposed rules may be viewed at our website at <http://hawaii.gov/labor>. Copies can also be mailed at no cost, upon written request to the Unemployment Insurance Administrator, 830 Punchbowl Street, Room 325, Honolulu, Hawaii 96813.

Interested persons may present, at the public hearing, any written or oral data, views, arguments, comments, and objections concerning the proposals at:

HONOLULU, OAHU

September 20, 2006; 1:00 to 4:00 p.m.

Keelikolani Building

830 Punchbowl Street

Rooms 310 and 313

Honolulu, Hawaii 96813

The public hearing will be continued, if necessary, to a time, date, and place announced at the scheduled hearing.

Interested persons unable to attend the public hearing, may submit written data, views, arguments, comments, and objections concerning the proposals to the Department of Labor and Industrial Relations, Unemployment Insurance Administrator, 830 Punchbowl Street, Room 325, Honolulu, Hawaii 96813. All submissions for the record must be received at or prior to the scheduled public hearing.

Auxiliary aids and services are available upon request by calling the Unemployment Insurance Division at (808) 586-9183 (voice), (808) 586-8847 (TTY), or 1-888-569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodations.

It is the policy of the Department of Labor and Industrial Relations that no person shall on the basis of race, color, sex, marital status, religion, creed, ethnic origin, national origin, age, disability, ancestry, arrest/court record, sexual orientation, and National Guard participation be subjected to discrimination, excluded from participation in, or denied the benefits of the department's services, programs, activities, or employment.

Dated: August 15, 2006

NELSON B. BEFITELE

Director

Department of Labor and Industrial Relations